

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:

Gina Setzer,

Bankruptcy Case No.: 10-80069

Soc. Sec. No. xxx-xx-0218

Mailing Address: 1412 Vickers Avenue, , Durham,
NC 27707-

Debtor.

Gina Setzer,

Plaintiff, A.P. No.: _____

Citifinancial Services, Inc.,

Defendant.

VERIFIED COMPLAINT TO VALUE COLLATERAL

The Plaintiff, above-named, respectfully alleges as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c), and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the secured status of the mortgage claim held by Citifinancial Services, Inc..
3. The Plaintiff is filed this bankruptcy case on January 15, 2010, seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Defendant Citifinancial Services, Inc. is a corporation and/or a partnership with an office and principal place of business located at Post Office Box 140069, , Irving, TX 75019-0069 and/or 465 Highway 70 Sw, , Hickory, NC 28601- . This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c).
5. The Plaintiff owns real property located at 7 Duke Power Road Granite Falls NC 28360. The legal description of the property is as follows:

ALL THAT CERTAIN LOT OR PARCEL OF LAND SITUATED IN LOVELADY TOWNSHIP CALDWELL COUNTY, NORTH CAROLINA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A STAKE IN THE CENTER OF THE POEW HOUSE ROAD, ANNA'S CORNER, AND RUNS WITH ANNA'S LINE, NORTH CORNER, THEN WITH TEAGUE'S LINE, NORTH 79 DEG 30' WEST 100 FEET TO A STAKE, A NEW CORNER, THEN A NEW LINE, SOUTH 18 DEG 30' WEST 193 FEET TO A STAKE IN THE CENTER OF THE POWER HOUSE ROAD, THEN WITH THE CENTER OF SAID

ROAD, NORTH 85 DEG EAST TO THE BEGINNING

BEING THE SAME PROPERTY CONVEYED TO GINA KATHRYN SETZER BY DEED FROM CRESIA KELLER WATTS AND HUSBAND, DOUGLAS G. WATTS RECORDED 10/06/2000 IN DEED BOOK 1314 PAGE 1015, IN THE REGISTER OF DEEDS OFFICE OF CALDWELL COUNTY, NORTH CAROLINA.

6. Everhome Mortgage Company holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$69,062.87. This Deed of Trust originally given to and held by Mortgage Investors Corporation. This Deed of Trust was recorded on January 10, 2005, in Book 1534 at Page 1733, Caldwell County Registry of Deeds.
7. Citifinancial Services, Inc. holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$17,264.41. This Deed of Trust was recorded on November 17, 2004, in Book 1528 at Page 1423, Caldwell County Registry of Deeds, and subordinated to the lien of Everhome Mortgage Company on January 19, 2005, recorded in Book 1535, Page 1572, Caldwell County Register of Deeds.
8. The fair market value of the said property is not greater than \$69,600.00.
9. Pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c) of the Bankruptcy Code and In re: Kidd, 161 B.R. 769 (Bankr. E.D.N.C. 1993), the loan with Citifinancial Services, Inc., secured by a second Deed of Trust against the Plaintiff's said property, is an unsecured claim. In turn, pursuant to 11 U.S.C. § 506(d), the lien securing said loan is void.
10. The Deed of Trust held and/or serviced by the Defendant takes an additional security interest in, among other personal property, the Plaintiff's escrow account.
11. Pursuant to In re Bradsher, 2010 WL 545967 (Bankr. M.D.N.C. February 16, 2010), such additional collateral renders 11 U.S.C. § 1322(b)(2) inapplicable.

WHEREFORE, the Plaintiff prays the Court find that said claim held by Citifinancial Services, Inc., which is secured by a second Deed of Trust upon said property, to be secured in the amount of \$537.13, with the remainder unsecured, and that said claim should therefore be classified as such for the purpose of this Chapter 13 case. The Plaintiff further prays that the Court order Citifinancial Services, Inc. to cancel the said Deed of Trust forthwith upon the completion of the Plaintiff's Chapter 13 plan and the granting of the Plaintiff's discharge, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: January 5, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz

Edward Boltz

Attorney for the Plaintiff

North Carolina State Bar No.: 23003

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Raleigh, N.C. 27615

(919) 847-9750

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Debtor.

Gina Setzer,

Plaintiff, A.P. No.: _____

Citifinancial Services, Inc.,

Defendant.

VERIFICATION OF COMPLAINT TO VALUE COLLATERAL

I, Gina Setzer, the Plaintiff in the above captioned case, hereby state, under penalty of perjury, that, to the best of my knowledge, that:

1. Everhome Mortgage Company holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$69,062.87. This Deed of Trust originally given to and held by Mortgage Investors Corporation. This Deed of Trust was recorded on January 10, 2005, in Book 1534 at Page 1733, Caldwell County Registry of Deeds.
2. Citifinancial Services, Inc. holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$17,264.41. This Deed of Trust was recorded on November 17, 2004, in Book 1528 at Page 1423, Caldwell County Registry of Deeds.
3. The fair market value of the said property is not greater than \$69,600.00.
4. The Deed of Trust held and/or serviced by the Defendant takes an additional security interest in, among other personal property, my escrow account.

Dated: 12/29/2010

/s/Gina Setzer

Gina Setzer

Notarization:

Sworn and subscribed before me on Dec., 29, 2010

/s/September D. Oakley
Signature of Notary Public

Affix Seal or
Stamp

Commission expires: 6/8/2015